

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Station)
(Wellington, Texas))

MM Docket No. 97-104
RM-9048

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

Hunt Broadcasting, Inc. ("HBI"), by its counsel, hereby submits this Petition for Reconsideration of the Staff's Report and Order released February 27, 1998 (DA 98-364). The Report and Order was incorrect in deciding that the HBI counterproposal is unacceptable due to the pendency of three other proceedings for two reasons. First, HBI's counterproposal to substitute at Jacksboro can stand on its own regardless of the outcome of any of the three related proceedings. Second, none of the related proceedings involve an issue that would prohibit a different channel being allotted to Jacksboro. In support hereof, HBI states as follows:

BACKGROUND

1. On May 19, 1997, HBI submitted a counterproposal to substitute Channel 269C for Channel 269C1 and change the community of license for Station KIKM (formerly KDVE), Denison-Sherman, Texas to Azle, Texas. In order to effectuate that proposal, a channel substitution is needed at Jacksboro, Texas for Station KJKB(FM), also licensed to HBI. HBI noted in its counterproposal that Station KJKB currently operates on Channel 269A but was ordered to move to Channel 252A in MM Docket No. 95-126, Report and Order, 11 FCC Rcd 5316 (1996) recons., 12 FCC Rcd 10265 (1997), which is currently pending on review by the Commission on an unrelated matter. In addition, while MM Docket No. 95-126 was still

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pending on reconsideration, the Commission ordered Station KJKB to change to Channel 299A in MM Docket No. 96-10, Memorandum Opinion and Order, 12 FCC Rcd 12056 (1997). That proceeding became final on August 15, 1997. Finally, in MM Docket No. 97-91, the Commission has proposed to substitute Channel 237A for Channel 299A at Jacksboro, Texas in response to a petition filed by Heftel Broadcasting Corporation.

2. In the counterproposal, HBI noted that “the instant proposal for Channel 269C at Azle is consistent with the final outcome of three docketed proceedings (MM Docket Nos. 95-126, 96-10, 97-96). So that there is no question of a contingency, HBI indicates here that it is willing to change to Channel 299A or Channel 237A...” (counterproposal at 12). HBI provided channel studies for 237A and 299A to demonstrate that either of those channels could be substituted at Jacksboro in this proceeding consistent with any action taken in the three pending docket proceedings. In this regard HBI stated, “[r]egardless of the outcome of MM Docket No. 97-91 (sic), a channel will be available for substitution at Jacksboro.” (Id at 12).

3. Nevertheless the Commission staff in its Report and Order in this proceeding ruled that HBI must await the outcome of MM Docket No. 95-126 and then refile its petition. In a footnote, the staff concluded that neither MM Docket No. 96-10 nor 97-91 afforded HBI any relief because neither proceeding was final when the HBI counterproposal was filed. The staff did not articulate its reasons for requiring HBI to await the outcome of these proceedings.

DISCUSSION

4. The Commission staff is incorrect that any or all of the three dockets needed to be final in order to substitute Channel 299A or Channel 237A at Jacksboro. As shown in the channel studies submitted with the counterproposal, either Channel 299A or 237A could be substituted at Jacksboro consistent with any possible action taken in MM Docket Nos. 95-126, 96-10 and 97-91. The purpose of submitting these channel studies was to demonstrate that

HBI's counterproposal was self contained and did not need to await the outcome of any of the three proceedings.

5. In MM Docket No. 95-126, a petition for reconsideration was pending at the time HBI submitted its counterproposal. However, the petition for reconsideration did not challenge the substitution of Channel 252A at Jacksboro. Indeed, the MO&O reaffirmed the Jacksboro channel change.

6. Similarly, the Application for Review filed by HBI in MM Docket No. 95-126 did not question the Jacksboro change. Rather, the purpose of the review was to clarify the need to reimburse a station in Paris, Texas for a channel change. HBI specifically referred to MM Docket No. 97-104, the instant proceeding, and stated that action here would render the Paris channel change moot. HBI viewed the elimination of the Paris channel change as a public benefit resulting from HBI's counterproposal in MM Docket No. 97-104. The Paris station agreed with HBI that there was a need to clarify the situation and indicated that consideration of the instant proceeding (MM Docket 97-104) first would be preferable so that the Paris station would not need to change channels unnecessarily. There was no issue raised concerning the Jacksboro substitution. Thus, no matter how MM Docket No. 95-126 was resolved, Channel 252A, Channel 299A or Channel 237A could be substituted at Jacksboro.¹

7. In MM Docket No. 96-10, Channel 299A was substituted at Jacksboro. That action took place in December 1996. However, a petition for reconsideration was filed concerning a matter unrelated to the Jacksboro channel change. That petition for reconsideration was withdrawn prior to the filing of HBI's counterproposal. Thus, regardless of the outcome of MM Docket No. 96-10 and particularly in view of the withdrawal of the petition for

¹ A separate late opposition pleading filed by the licensee of a station in Madill, Oklahoma did not challenge the Jacksboro substitution.

reconsideration, Channel 299A was still available for substitution when HBI's counterproposal was filed.

8. Indeed in MM Docket No. 97-91, the Notice of Proposed Rule Making was issued on March 14, 1997 and specifically proposed the substitution of Channel 237A for Channel 299A at Jacksboro. That Notice treated the substitution as having already been made in MM Docket 96-10. See NPRM at para. 5.² There was no mention of the pending petition for reconsideration in MM Docket No. 96-10, an apparent recognition that the Channel 299A substitution was not in question and that, in any event, the petition for reconsideration had been withdrawn.

9. In MM Docket No. 97-91, there are three pending scenarios relating to Jacksboro. If the Heftel proposal is successful, Channel 237A can be substituted at Jacksboro. If Heftel's proposal is denied and a conflicting proposal is adopted at Howe, Texas, then Channel 299A can remain at Jacksboro. Finally, if both proposals are denied, Channel 299A can still remain at Jacksboro. Thus, no matter what happens in MM Docket No. 97-91, HBI's proposal is acceptable to substitute either Channel 299A or Channel 237A for Jacksboro in this instant proceeding.

10. The staff's R&O in this proceeding did not articulate its reason for requiring finality in MM Docket No. 95-126 first. The R&O seemed to take the position that all possible scenarios pending in other proceedings must be final before HBI's counterproposal can be considered here. However, as stated, when the HBI counterproposal was filed, it was clear that after the dust settled in the three related proceedings, no matter what the outcome, Jacksboro

² HBI notes that when the Commission proposed a substitute channel at Jacksboro in MM Docket No. 97-91, there were two pending proceedings with respect to Jacksboro that were not final (MM Docket No. 95-126 and 96-10). Nevertheless, the Commission did not need finality there in order to propose a channel substitution at Jacksboro. In that regard, HBI views the action taken here as inconsistent with the action taken in MM Docket No. 97-91.

would receive a channel that was consistent with HBI's counterproposal here. Furthermore, none of these proceedings had any issue pending related to whether a channel could be substituted at Jacksboro. Under such circumstances the Commission had no basis for ruling that HBI's counterproposal was unacceptable. The Commission staff cited no case for requiring HBI to await the outcome of a pending proceeding (MM Docket No. 95-126). Indeed as mentioned, MM Docket No. 97-91 did propose a substitute channel at Jacksboro during the pendency of MM Docket No. 95-126. Furthermore, the proposal in MM Docket No. 96-10 which included a Jacksboro channel change was actually adopted while MM Docket No. 95-126 was pending!

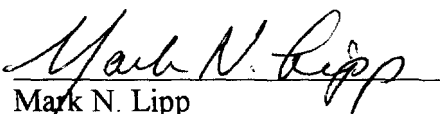
11. It is unfortunate that the Commission staff took the drastic and unprecedented action of dismissing HBI's counterproposal while the Application for Review in MM Docket No. 95-126 remains pending. One of the bases for filing the Application for Review was that by granting HBI's counterproposal to allot Channel 269C at Azle, Texas, MM Docket No. 95-126 would be rendered moot. Thus, the staff could have provided substantial benefits to the public here by allotting a first local service to Azle, Texas, offering a large gain in service and eliminating the need for channel substitutions at Paris, Texas and Madill, Oklahoma and dismissed the Application for Review as moot! Instead, the Commission, in effect, decided that it would rather expend its resources to decide the Application for Review and then permit HBI to refile its counterproposal. The public interest is not served by such a procedure.

12. HBI notes that this proceeding is unopposed and offers substantial public interest benefits. Those benefits should be provided as expeditiously as possible. To that end, HBI has decided to withdraw its Application for Review in order to remove the impediment identified by the R&O. The withdrawal pleading is being filed in MM Docket No. 95-126.

13. Accordingly, HBI urges the Commission to issue a Public Notice accepting HBI's counterproposal and then act expeditiously to grant HBI's unopposed counterproposal by substituting either Channel 299A or Channel 237A at Jacksboro.³

Respectfully submitted,

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March 6, 1998

³ HBI's counterproposal was also filed in MM Docket No. 97-225 (Olney and Archer City, Texas). As an alternative to deciding this petition for reconsideration, the Commission could accept the HBI counterproposal in that proceeding by Public Notice. In that regard, at the time the HBI counterproposal was filed in MM Docket No. 97-225, the substitution of Channel 299A at Jacksboro in MM Docket No. 96-10 was final. HBI notes that in MM Docket No. 97-225, the previous conflict that necessitated the refiling of HBI's counterproposal in that proceeding was resolved by proposing on alternate channel at Olney.

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Ginsburg, Feldman and Bress, Chartered, do hereby certify that I have, on this 6th of March, 1998, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "PETITION FOR RECONSIDERATION" to the following:

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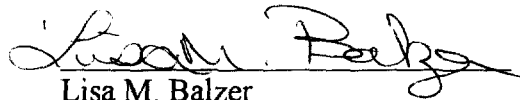
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